

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 65

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO FINANCIAL TRANSACTIONS; PROVIDING FOR THE CAPPING
OF FINANCE CHARGES AND THE REGULATION OF PAYDAY LOANS;
AMENDING, REPEALING AND ENACTING CERTAIN PROVISIONS OF THE NEW
MEXICO SMALL LOAN ACT OF 1955.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-15-2 NMSA 1978 (being Laws 1955,
Chapter 128, Section 2, as amended) is amended to read:

"58-15-2. DEFINITIONS.--The following words and terms
when used in the New Mexico Small Loan Act of 1955 [~~shall~~] have
the following meanings unless the context clearly requires a
different meaning. The meaning ascribed to the singular form
[~~shall apply~~] applies also to the plural:

[A. ~~"person" shall include individuals, copartners,
associations, trusts, corporations and any other legal entity;~~]

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underscored material = new
[bracketed material] = delete

1 A. "consumer" means a resident of New Mexico who
2 enters into a loan agreement and receives the loan proceeds in
3 New Mexico;

4 B. "department" or "division" means the financial
5 institutions division of the regulation and licensing
6 department;

7 C. "director" means the director of the financial
8 institutions division of the regulation and licensing
9 department;

10 D. "installment loan" means a loan repayable in
11 substantially equal installments of principal and interest for
12 a period of no less than one hundred twenty days to maturity;

13 ~~[B.]~~ E. "license" ~~[shall mean]~~ means a permit
14 issued under the authority of the New Mexico Small Loan Act of
15 1955 to make loans and collect charges therefor strictly in
16 accordance with the provisions of ~~[the New Mexico Small Loan~~
17 ~~Act of 1955]~~ that act at a single place of business. It shall
18 constitute and shall be construed as a grant of a ~~[revokable]~~
19 revocable privilege only to be held and enjoyed subject to all
20 the conditions, restrictions and limitations contained in the
21 New Mexico Small Loan Act of 1955 and lawful regulations
22 promulgated by the director ~~[of the financial institutions~~
23 ~~division]~~ and not otherwise;

24 ~~[G.]~~ F. "licensee" ~~[shall mean]~~ means a person to
25 whom one or more licenses have been issued ~~[hereunder]~~ pursuant

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1 to the New Mexico Small Loan Act of 1955 upon ~~[their]~~ the
 2 person's written application electing to become a licensee and
 3 consenting to exercise the privilege of a licensee solely in
 4 conformity with the New Mexico Small Loan Act of 1955 and the
 5 lawful regulations promulgated by the director ~~[of the~~
 6 ~~financial institutions division hereunder]~~ under that act and
 7 whose name ~~[or names appear]~~ appears on the face of the
 8 license;

9 ~~D. "director" means the director of the financial~~
 10 ~~institutions division of the commerce and industry and~~
 11 ~~licensing department;~~

12 ~~E. "department" means the financial institutions~~
 13 ~~division of the commerce and industry department;]~~

14 G. "payday loan" means a loan in which the licensee
 15 cashes a personal check tendered by the consumer and agrees in
 16 writing to defer presentment of that check until the consumer's
 17 next payday or another date agreed to by the licensee and the
 18 consumer and:

19 (1) includes any advance of money or
 20 arrangement or extension of credit whereby the licensee, for a
 21 fee, finance charge or other consideration:

22 (a) accepts a dated instrument from a
 23 consumer or an authorization signed by a consumer to transfer
 24 or withdraw funds from an account for the specific purpose of
 25 repaying a payday loan;

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1 (b) agrees to hold a dated instrument
2 for a period of time prior to negotiating or depositing the
3 instrument; or

4 (c) pays to the consumer, credits to the
5 consumer's account or pays another person on behalf of the
6 consumer the amount of an instrument actually paid or to be
7 paid pursuant to the New Mexico Small Loan Act of 1955; but

8 (2) does not include:

9 (a) an overdraft product or service
10 offered by a banking corporation, savings and loan association
11 or credit union; and

12 (b) installment loans made under the New
13 Mexico Bank Installment Loan Act of 1959;

14 H. "person" includes individuals, copartners,
15 associations, trusts, corporations and any other legal entity;
16 and

17 I. "simple interest" means a method of calculating
18 interest in which the amount of interest is calculated based on
19 the annual interest rate disclosed in the loan agreement and is
20 computed only on the outstanding principal balance of the
21 loan."

22 Section 2. Section 58-15-3 NMSA 1978 (being Laws 1955,
23 Chapter 128, Section 3, as amended) is amended to read:

24 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--
25 PENALTY.--

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1 A. ~~[No]~~ A person shall not engage in the business
 2 of lending in amounts of two thousand five hundred dollars
 3 (\$2,500) or less for a loan without first having obtained a
 4 license from the director. Nothing contained in this
 5 subsection shall restrict or prohibit a licensee under the New
 6 Mexico Small Loan Act of 1955 from making loans in any amount
 7 under the New Mexico Bank Installment Loan Act of 1959 in
 8 accordance with the provisions of Section 58-7-2 NMSA 1978 or
 9 the general laws of this state governing money interest and
 10 usury.

11 B. Nothing in the New Mexico Small Loan Act of 1955
 12 shall apply to a person making individual advances of two
 13 thousand five hundred dollars (\$2,500) or less under a written
 14 agreement providing for a total loan or line of credit in
 15 excess of two thousand five hundred dollars (\$2,500) [~~for which~~
 16 ~~real estate is pledged as collateral~~].

17 C. ~~[Any]~~ A banking corporation, savings and loan
 18 association or credit union operating under the laws of the
 19 United States or of ~~[New Mexico]~~ a state shall be exempt from
 20 the licensing requirements of the New Mexico Small Loan Act of
 21 1955, nor shall that act apply to ~~[any]~~ business transacted by
 22 any such person under the authority of and as permitted by any
 23 such law nor to any bona fide pawnbroking business transacted
 24 under a pawnbroker's license nor to bona fide commercial loans
 25 made to dealers upon personal property held for resale.

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1 Nothing contained in the New Mexico Small Loan Act of 1955
2 shall be construed as abridging the rights of any of those
3 exempted from the operations of that act from contracting for
4 or receiving interest or charges not in violation of [~~any~~] an
5 existing applicable statute of this state.

6 D. The provisions of Subsection A of this section
7 apply to [~~any~~]:

8 (1) a person [~~owning any~~] who owns an
9 interest, legal or equitable, in the business or profits of
10 [~~any~~] a licensee and whose name does not specifically appear on
11 the face of the license, except a stockholder in a corporate
12 licensee; and

13 [~~to any~~] (2) a person who seeks to evade its
14 application by any device, subterfuge or pretense whatsoever,
15 including but not thereby limiting the generality of the
16 foregoing:

17 (a) the loan, forbearance, use or sale
18 of credit (as guarantor, surety, endorser, comaker or
19 otherwise), money, goods or things in action;

20 (b) the use of collateral or related
21 sales or purchases of goods or services or agreements to sell
22 or purchase, whether real or pretended;

23 (c) receiving or charging compensation
24 for goods or services, whether or not sold, delivered or
25 provided; and

1 (d) the real or pretended negotiation,
2 arrangement or procurement of a loan through any use or
3 activity of a third person, whether real or fictitious.

4 E. ~~Any~~ A person, copartnership, trust and the
5 trustees or beneficiaries thereof or association or corporation
6 and the several members, officers, directors, agents and
7 employees thereof who violate or participate in the violation
8 of ~~any~~ a provision of Subsection A of this section is guilty
9 of a petty misdemeanor and upon conviction shall be sentenced
10 pursuant to the provisions of Subsection B of Section 31-19-1
11 ~~(B)~~ NMSA 1978. ~~Any~~ A contract or loan in the making or
12 collection of which ~~any~~ an act is done that violates
13 Subsection A or D of this section is void and the lender has no
14 right to collect, receive or retain any principal, interest or
15 charges whatsoever."

16 Section 3. Section 58-15-5 NMSA 1978 (being Laws 1978,
17 Chapter 6, Section 1, as amended) is amended to read:

18 "58-15-5. LICENSES--INVESTIGATION OF APPLICATION--
19 ISSUANCE--DENIAL--ISSUANCE OF RENEWAL LICENSE--DENIAL OF
20 RENEWAL LICENSE--FITNESS AND CHARACTER OF APPLICANT--LICENSE
21 FEES--LICENSEE BOUND BY ACT.--

22 A. Upon the filing of an application, whether it is
23 an original or a renewal, the director shall investigate the
24 facts concerning the application and the requirements provided
25 in this section.

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1 ~~[Any]~~ B. An applicant for license, upon written
2 notice to do so by the director, shall, within twenty days
3 after service of the notice, furnish in writing, under oath, to
4 the director ~~[any and]~~ all additional information required by
5 the director that may be relevant or, in the opinion of the
6 director, helpful ~~[to him]~~ in conducting ~~[his]~~ the
7 investigation.

8 C. Failure to comply with the director's
9 requirement for supplemental information or the willful
10 furnishing of false information is sufficient ~~[ground]~~ grounds
11 for denial of license.

12 D. False or misleading information willfully and
13 intentionally furnished to the director prior to the issuance
14 of any license is ~~[ground]~~ grounds for suspension or revocation
15 of any license in accordance with the procedures for suspension
16 or revocation of license in the New Mexico Small Loan Act of
17 1955.

18 E. The director shall grant or deny each
19 application for an original license within sixty days from the
20 filing of the application with the required information and
21 fees, unless the period is extended by written agreement
22 between the applicant and the director.

23 ~~[B.]~~ F. In the event the director finds that:

24 (1) ~~[that]~~ the financial responsibility,
25 character and general fitness of the applicant for an original

1 license and of the individual members and beneficiaries
2 thereof, if the applicant is a copartnership, association or
3 trust, and of the officers and directors thereof, if the
4 applicant is a corporation, are such as to command the
5 confidence of the public and to warrant belief that the
6 business will be operated lawfully, honestly, fairly and
7 efficiently within the declared purposes and spirit of the New
8 Mexico Small Loan Act of 1955;

9 (2) [~~that~~] allowing the applicant to engage in
10 business will promote the convenience and advantage of the
11 community in which the business of the applicant is to be
12 conducted; and

13 (3) [~~that~~] the applicant has available for
14 operation of the business at the specified location cash or its
15 equivalent, convertible securities or receivables of thirty
16 thousand dollars (\$30,000) or any combination thereof;
17 [~~he~~] the director shall enter an order granting the
18 application, file [~~his~~] the director's findings and, upon
19 payment of the license fee of [~~five hundred dollars (\$500)~~]
20 seven hundred fifty dollars (\$750), issue and deliver a license
21 to the applicant.

22 [~~G.~~] G. If the director does not make the findings
23 enumerated in Subsection [~~B~~] F of this section, [~~he~~] the
24 director shall enter an order denying the application, notify
25 the applicant of the denial and retain the application fee.

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1 Within thirty days after the entry of such an order, ~~[he]~~ the
2 director shall prepare written findings and shall deliver a
3 copy to the applicant.

4 ~~[D.]~~ H. Written application for renewal licenses
5 shall be filed on or before March 31 of each year, and
6 thereupon the director shall investigate the facts and review
7 ~~[his]~~ the files of examinations of the applicant made by ~~[his]~~
8 the director's office and of complaints filed by borrowers, if
9 any. The director shall deliver a renewal license to the
10 applicant if ~~[he]~~ the director finds that:

11 (1) ~~[that]~~ no valid complaints of violations
12 or abuses of the New Mexico Small Loan Act of 1955 or of the
13 regulations of the director promulgated under that act have
14 been filed by borrowers;

15 (2) ~~[that his]~~ examinations of the affairs of
16 the applicant indicate that the business has been conducted and
17 operated lawfully and efficiently within the declared purposes
18 and spirit of the New Mexico Small Loan Act of 1955; and

19 (3) ~~[that]~~ the financial responsibility,
20 experience and general fitness and character of the applicant
21 remain such as to command the confidence of the public and to
22 warrant the belief that the business will continue to be
23 operated lawfully and efficiently within the purposes and
24 spirit of the New Mexico Small Loan Act of 1955. ~~[he shall~~
25 ~~deliver a renewal license to the applicant~~

1 ~~E.]~~ I. If the director does not make the findings
2 enumerated in Subsection ~~[D]~~ H of this section, ~~[he]~~ the
3 director may grant a temporary extension of the license not
4 exceeding sixty days pending a hearing; shall enter an order
5 fixing a date for hearing upon the application; shall notify
6 the licensee thereof, specifying the particular complaints,
7 violations or abuses or other reasons for ~~[his]~~ the director's
8 contemplated refusal to renew the license; and shall afford to
9 the applicant an opportunity to be heard. At the hearing, the
10 director shall produce ~~[his]~~ evidence to establish the truth of
11 the charges of violation or other grounds specified in the
12 notice, and the applicant shall be accorded the right to
13 produce evidence or other matters of defense. If after the
14 hearing the director finds that the complaints of violations or
15 other grounds specified in the notice are not well-founded,
16 ~~[he]~~ the director shall issue the renewal license. If ~~[he]~~ the
17 director finds that the complaints of violations or other
18 grounds are well-founded, ~~[he]~~ the director shall enter an
19 order denying the renewal application and notify the applicant
20 of the denial, returning the renewal license fee tendered with
21 the application. Within thirty days after the entry of such an
22 order, ~~[he]~~ the director shall prepare written findings and
23 shall deliver a copy of the findings to the applicant. The
24 order shall be subject to review as provided in Section
25 58-15-25 NMSA 1978. The court in its discretion and upon

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1 proper showing may order a temporary extension of the license
2 pending disposition of the review proceedings.

3 [F-] J. In connection with the determination of
4 fitness and character of an applicant [~~under~~] pursuant to
5 provisions of this section, the fact that the applicant or
6 licensee is a member of or interested financially in, connected
7 or affiliated with, controls or is controlled by or owns or is
8 owned by other corporations, partnerships, trusts, associations
9 or other legal entities engaged in the lending of money whose
10 policies and practices as to rates of interest, charges and
11 fees and general dealing with borrowers are questionable or
12 would constitute violation of the general usury statutes of
13 this state or of the declared purposes and spirit of the New
14 Mexico Small Loan Act of 1955 shall be given such consideration
15 and weight as the director determines.

16 [G-] K. At the time of issuance of original license
17 and each annual renewal thereof, the licensee for each licensed
18 office shall pay to the director as a license fee for the
19 period covered by the license the sum of [~~five hundred dollars~~
20 ~~(\$500)~~] seven hundred fifty dollars (\$750) as a minimum, plus
21 an additional seventy-five cents (\$.75) for each one thousand
22 dollars (\$1,000) or fraction thereof of loans outstanding as of
23 December 31 next preceding, as shown on the applicant's annual
24 report. In the event that the application for annual renewal
25 of the license is delinquent, the licensee shall also pay a

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underscoring material = new
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1 delinquency fee of ten dollars (\$10.00) per day for each day
 2 the licensee is delinquent in filing the application for
 3 renewal.

4 ~~[H.—Each]~~ L. A licensee by accepting ~~[any]~~ a
 5 license that is issued or renewed or by continuing to operate
 6 ~~[any]~~ a licensed office under the New Mexico Small Loan Act of
 7 1955 shall by such action be deemed to have consented to be
 8 bound by the lawful provisions of that act and all lawful
 9 requirements, regulations and orders of the director
 10 promulgated or issued pursuant to any authorization granted in
 11 that act."

12 Section 4. Section 58-15-9 NMSA 1978 (being Laws 1955,
 13 Chapter 128, Section 9, as amended) is amended to read:

14 "58-15-9. EXAMINATION OF LICENSEE'S BOOKS AND RECORDS--
 15 WITNESSES.--

16 A. At least once each year, the director or ~~[his~~
 17 ~~duly]~~ the director's authorized representative shall make an
 18 examination of the place of business of each licensee and ~~[such~~
 19 ~~of]~~ the loans, transactions, books, papers and records of the
 20 licensee insofar as they pertain to the business licensed under
 21 the New Mexico Small Loan Act of 1955 as ~~[he]~~ the director may
 22 deem necessary. The licensee shall pay to the ~~[commissioner]~~
 23 director for such annual examination a fee of ~~[two hundred~~
 24 ~~dollars (\$200)]~~ four hundred dollars (\$400).

25 B. Within a reasonable time after the completion of

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1 an examination of a licensed office, the director shall mail to
2 the licensee a copy of the report of the examination, together
3 with any comments, exceptions, objections or criticisms of the
4 director concerning the conduct of the licensee and the
5 operation of the licensed office.

6 ~~[B.]~~ C. For the purpose of discovering violations
7 of the New Mexico Small Loan Act of 1955 or of securing
8 information lawfully required under that act, the director or
9 ~~[his duty]~~ the director's authorized representative may at any
10 time investigate the business and examine the books, accounts,
11 papers and records used therein, including income tax returns
12 or other reports filed in the office of the director of the
13 revenue processing division of the taxation and revenue
14 department of:

15 (1) any licensee;

16 (2) any other person engaged in the business
17 described in Subsection A of Section 58-15-3 NMSA 1978 or
18 participating in such business as principal, agent, broker or
19 otherwise; and

20 (3) any person whom the director has
21 reasonable cause to believe is violating any provision of ~~[that~~
22 ~~act]~~ the New Mexico Small Loan Act of 1955, whether the person
23 claims to be within the authority or beyond the scope of that
24 act.

25 D. For the purposes of this section, ~~[any]~~ a person

1 who advertises, solicits or holds himself out as willing to
2 make loan transactions in any amount, except persons, financial
3 institutions or lending agencies operating under charters or
4 licenses issued by [~~any~~] a state or federal agency or under any
5 special statute, shall be subject to investigation under the
6 New Mexico Small Loan Act of 1955 and shall be presumed to be
7 engaged in the business described in Subsection A of Section
8 58-15-3 NMSA 1978 as to any loans of two thousand five hundred
9 dollars (\$2,500) or less.

10 [~~G.~~] E. To facilitate the examinations and
11 investigations by the director and fully disclose the
12 operations and methods of operation of each licensed office,
13 the licensee shall, in each licensed office, keep on file as
14 part of the records of the office all office manuals,
15 communications or directives containing statements of loan
16 policy to office managers and employees. If the licensee is an
17 individual, corporation, trust or association, the licensee
18 shall keep in at least one office for information of the
19 director a record of the several individuals, firms,
20 beneficiaries of any trust and corporations deriving or
21 receiving any part of the benefits, net income or profits from
22 the operation of the licensee within New Mexico.

23 [~~D.~~] F. For the purposes of this section, the
24 director or [~~his duty~~] the director's authorized representative
25 shall have and be given free access to the offices and places

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1 of business, files, safes and vaults of all licensees and shall
2 have authority to require the attendance of any person and to
3 examine ~~[him]~~ the person under oath relative to such loans or
4 business or to the subject matter of any examination,
5 investigation or hearing as provided in the New Mexico Small
6 Loan Act of 1955. Notices to appear before the director for
7 examination under oath may be served by registered mail. If
8 the party notified to appear is the licensee, any person named
9 on the face of the license being investigated or any agent,
10 employee or manager participating in the licensee's business
11 and ~~[he]~~ the party fails to appear for examination or refuses
12 to answer questions submitted, the director may, forthwith and
13 without further notice to the licensee, suspend the license
14 involved pending compliance with the notice. Upon failure of
15 any other person to appear or to answer questions, the director
16 may apply to and invoke the aid of any district court of New
17 Mexico in compelling the attendance and testimony of any such
18 person and the production of books, records, written
19 instruments and documents relating to the business of the
20 licensee. ~~[Any]~~ The district court whose aid is so invoked by
21 the director may, in case of contumacy or refusal to obey any
22 order of the district court issued to compel the attendance of
23 the person or the production of books, records, written
24 instruments and documents, punish the person as for contempt of
25 court.

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1 ~~[E.]~~ G. The director shall prescribe rules of
2 procedure for all hearings, examinations or investigations
3 provided for in the New Mexico Small Loan Act of 1955. The
4 director is not bound by the usual common law or statutory
5 rules of evidence or by any technical or formal rules of
6 procedure or pleading and specification of charges other than
7 as specifically provided in the New Mexico Small Loan Act of
8 1955 but may conduct hearings, examinations and investigations
9 in the manner best calculated to ascertain the substantial
10 rights of the parties interested.

11 ~~[F.]~~ H. The director has the power to administer
12 oaths, certify official acts and records of ~~[his]~~ the
13 director's office, issue subpoenas for witnesses in the name of
14 and under the seal of ~~[his]~~ the director's office and compel
15 the production of papers, books, accounts and documents. ~~[He]~~
16 The director shall issue subpoenas at the instance of any party
17 to a hearing before the division upon payment of a fee of two
18 dollars ~~and~~ fifty cents (\$2.50) for each subpoena so issued.

19 ~~[G.]~~ I. Depositions may be taken with or without a
20 commission, and written interrogatories may be submitted in the
21 same manner and on the same grounds provided by law for the
22 taking of depositions or submission of written interrogatories
23 in civil actions pending in the district courts of this state.

24 ~~[H.]~~ J. Each witness who appears before the
25 director by ~~[his]~~ the director's order shall receive the fees

1 and mileage provided for witnesses in civil actions in the
2 district court. Fees and mileage shall be paid by the state,
3 but no witness subpoenaed at the instance of parties other than
4 the director is entitled to compensation from the state for
5 attendance or mileage unless the director certifies that [~~his~~]
6 the witness's testimony is material.

7 [~~F.~~] K. Whenever the director has reasonable cause
8 to believe that [~~any~~] a person is violating [~~any~~] a provision
9 of the New Mexico Small Loan Act of 1955, [~~he~~] the director
10 may, in addition to all actions provided for in that act and
11 without prejudice thereto, enter an order requiring the person
12 to desist or to refrain from the violation. An action may be
13 brought on the relation of the attorney general and the
14 director to enjoin the person from engaging in or continuing
15 the violation or from doing any act in furtherance of the
16 violation. In any such action, an order or judgment may be
17 entered awarding a preliminary or final injunction as may be
18 deemed proper. In addition to all other means provided by law
19 for the enforcement of a temporary restraining order, temporary
20 injunction or final injunction, the court in which such action
21 is brought shall have power and jurisdiction to impound and to
22 appoint a receiver for the property and business of the
23 defendants, including books, papers, documents and records
24 pertaining thereto or so much thereof as the court may deem
25 reasonably necessary to prevent further violations of the New

1 Mexico Small Loan Act of 1955 through or by means of the use of
 2 the property and business. The receiver, when appointed and
 3 qualified, shall have powers and duties as to custody,
 4 collection, administration, winding up and liquidation of the
 5 property and business as are from time to time conferred upon
 6 ~~[him]~~ the receiver by the court."

7 Section 5. Section 58-15-10 NMSA 1978 (being Laws 1955,
 8 Chapter 128, Section 10, as amended) is amended to read:

9 "58-15-10. BOOKS AND RECORDS--ANNUAL REPORTS--ADDITIONAL
 10 INFORMATION.--

11 A. Each licensee shall keep and use in ~~[his]~~
 12 business such books, accounts and records in accordance with
 13 sound accounting practices ~~[as in the director's opinion]~~ that
 14 will enable ~~[him]~~ the director to determine whether the
 15 licensee is complying with the provisions of the New Mexico
 16 Small Loan Act of 1955 and with the orders and regulations
 17 lawfully made by the director ~~[under]~~ pursuant to provisions of
 18 that act. Each licensee shall preserve the books, accounts and
 19 records for at least two years after making the final entry on
 20 ~~[any]~~ a loan recorded therein.

21 B. Each licensee shall, annually on or before March
 22 31, file a report with the director giving such relevant
 23 information as ~~[he]~~ the director may reasonably require
 24 concerning the business and operations during the preceding
 25 calendar year for each licensed place of business conducted by

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1 the licensee within the state pursuant to the provisions of the
2 New Mexico Small Loan Act of 1955. The report shall be made
3 under oath and shall be in the form prescribed by the director.
4 A summary of the reports shall be included in the published
5 annual report of the director.

6 C. At the time of filing each annual report, at the
7 time of the annual examination or at any other time when [~~any~~]
8 a license is in effect, the director may, upon written notice,
9 require [~~any~~] a licensee to furnish within twenty days in
10 writing, and under oath if so specified by any written notice
11 issued and served by the director upon the licensee, [~~any and~~
12 ~~all~~] additional information as to ownership of any office;
13 operation of any office; books, records, files and papers; and
14 affiliation or relationship with any other person, firm, trust,
15 association or corporation as, in the opinion of the director,
16 may be helpful [~~to him~~] in the discharge of [~~his~~] the
17 director's official duties.

18 D. False or misleading information willfully
19 furnished to the director by [~~any~~] a licensee in [~~any~~] an
20 annual report or pursuant to [~~any~~] a notice or requirement of
21 the director is sufficient [~~ground~~] grounds for suspension and
22 revocation of license in accordance with the procedures for
23 suspension or revocation of license set forth in the New Mexico
24 Small Loan Act of 1955."

25 Section 6. Section 58-15-12 NMSA 1978 (being Laws 1955,

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underscoring material = new
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1 Chapter 128, Section 12, as amended) is amended to read:

2 "58-15-12. ADVERTISING [~~SCHEDULE OF CHARGES~~].--~~[A. No]~~ A
 3 licensee or other person subject to the New Mexico Small Loan
 4 Act of 1955 shall not advertise, display, distribute or
 5 broadcast or cause or permit to be advertised, displayed,
 6 distributed or broadcast in any manner whatsoever [~~any~~] a
 7 false, misleading or deceptive statement or representation with
 8 regard to the charges, terms or conditions for loans in the
 9 amount or of the value of two thousand five hundred dollars
 10 (\$2,500) or less. The director may require that charges or
 11 rates of charge, if stated by a licensee, be stated fully and
 12 clearly in such manner as [~~he may deem~~] the director deems
 13 necessary to prevent misunderstanding [~~thereof~~] by prospective
 14 borrowers. The director may permit or require licensees to
 15 refer in their advertising to the fact that their business is
 16 under state supervision, subject to conditions imposed by [~~him~~]
 17 the director to prevent [~~any~~] erroneous impressions as to the
 18 scope or degree of protection provided by the New Mexico Small
 19 Loan Act of 1955.

20 [~~B. Each licensee shall display in each licensed~~
 21 ~~place of business, in a place where it will be readily visible~~
 22 ~~by borrowers, a full and accurate schedule of the rates of~~
 23 ~~charges upon all classes of loans currently to be made by him,~~
 24 ~~stated on a percent per annum basis and also on a percent per~~
 25 ~~month basis.]"~~

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1 Section 7. Section 58-15-14.1 NMSA 1978 (being Laws 1983,
2 Chapter 95, Section 2) is amended to read:

3 "58-15-14.1. CHARGES--METHOD OF COMPUTATION.--~~[Charges~~
4 ~~on]~~ The simple interest method shall be used for loans made
5 under the New Mexico Small Loan Act of 1955. Simple interest
6 charges are recomputed whenever a payment is received by a
7 licensee. Interest charges shall not be paid, deducted or
8 received in advance. [~~Such~~] Interest charges shall not be
9 compounded. However, if part or all of the consideration for a
10 loan contract is the unpaid principal balance of a prior loan,
11 then the principal amount payable under the loan contract may
12 include any unpaid charges [~~which~~] that have accrued within
13 sixty days on the prior loan. Such charges shall be computed
14 on the basis of the number of days actually elapsed. [~~For the~~
15 ~~purpose of computing charges, whether at the maximum rate or~~
16 ~~less, a month shall be any period of thirty consecutive days~~
17 ~~and the rate of charge for each day shall be one-thirtieth of~~
18 ~~the monthly rate.]"~~

19 Section 8. Section 58-15-17 NMSA 1978 (being Laws 1955,
20 Chapter 128, Section 15, as amended) is amended to read:

21 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF LOANS--
22 INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER JUDGMENT
23 AND INTEREST.--

24 A. Every licensee shall:

25 (1) at the time [~~any~~] a loan is made within

1 the provisions of the New Mexico Small Loan Act of 1955,
2 deliver to the borrower or, if there are two or more borrowers
3 on the same obligation, to one of them, a statement in English
4 on which shall be printed a copy of Section 58-15-14.1 NMSA
5 1978 and disclosing in clear and distinct terms:

- 6 (a) the amount of the loan;
7 (b) the date the loan was made;
8 (c) a schedule or a description of the
9 payments;
10 (d) the type of the security, if any,
11 for the loan;
12 (e) the name and address of the licensed
13 office;
14 (f) the name of the person primarily
15 obligated for the loan;
16 (g) the amount of principal;
17 (h) the agreed rate of charge stated on
18 [~~a percent per month and~~] a percent per year basis and the
19 amount in dollars and cents; [~~and~~]
20 (i) all other disclosures required
21 pursuant to state and federal law; and
22 (j) other items allowable pursuant to
23 that act, so stated as to clearly show the allocation of each
24 item included;
25 (2) for each payment made on account of any

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1 such loan, give to the person making it a plain and complete
2 receipt specifying the date and amount of the payment, the
3 amount applied to interest and principal and the balance
4 unpaid. When payment is made in any other manner than by the
5 borrower in person, by an agent of the borrower or by check or
6 money order, the licensee shall mail the receipt to the
7 borrower's last known address or hold the receipt for delivery
8 upon request of the borrower. A copy of all receipts shall be
9 kept on file in the office of the licensee as a part of [~~his~~]
10 the licensee's records; and

11 (3) upon payment of the loan in full, mark
12 plainly every note and promise to pay signed by any obligor
13 with the word "paid" or "canceled" and promptly file or record
14 a release of any mortgage if the mortgage has been recorded,
15 restore any pledge and cancel and return any note and any
16 assignment given to the licensee. A licensee may mark and
17 return a copy of the note, promise to pay or any assignment if
18 the copy accurately reproduces the complete original.

19 B. [~~No~~] A licensee shall not take [~~any~~] a note or
20 promise to pay that does not disclose the amount of the loan, a
21 schedule of payments, or a description thereof, and the agreed
22 charge or rate of charge or any instrument in which blanks are
23 left to be filled in after execution.

24 C. If judgment is obtained against [~~any~~] a party
25 [~~or any~~] on a loan made [~~under~~] pursuant to the provisions of

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[bracketed material] = delete

1 the New Mexico Small Loan Act of 1955, neither the judgment nor
 2 the loan shall carry, from the date of the judgment, [any]
 3 charges against [any] a party to the loan other than [court]
 4 costs, [attorneys'] attorney fees and post-judgment interest
 5 [on the amount of the judgment at ten percent a year] as
 6 provided by law.

7 ~~[D. Any loan made under the provisions of the New~~
 8 ~~Mexico Small Loan Act of 1955 that is filed and approved as a~~
 9 ~~claim in any bankruptcy proceeding shall, from a date ninety~~
 10 ~~days subsequent to the date of adjudication, bear interest at~~
 11 ~~the rate of ten percent a year only. This limitation shall not~~
 12 ~~apply when the bankrupt is not discharged in bankruptcy or to~~
 13 ~~any obligation not dischargeable under the provisions of the~~
 14 ~~Bankruptcy Act presently in force or as hereafter amended.~~

15 ~~E. No loan made under the provisions of the New~~
 16 ~~Mexico Small Loan Act of 1955 shall bear interest after ninety~~
 17 ~~days from the date of the death of the borrower in excess of a~~
 18 ~~rate of ten percent a year on the unpaid principal balance of~~
 19 ~~the loan.~~

20 ~~F. No loan made under the provisions of the New~~
 21 ~~Mexico Small Loan Act of 1955 shall bear interest after twelve~~
 22 ~~months from the date of maturity of the loan in excess of ten~~
 23 ~~percent a year upon the unpaid principal balance of the loan.]"~~

24 Section 9. Section 58-15-20 NMSA 1978 (being Laws 1955,
 25 Chapter 128, Section 18) is amended to read:

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1 "58-15-20. FEES AND COSTS.--

2 [~~(a) FILING OR RECORDING FEES~~] A. Notwithstanding
3 any provision of [~~this Act~~] the New Mexico Small Loan Act of
4 1955, lawful fees, if any, actually and necessarily paid out by
5 the licensee to [~~any~~] a public officer for the filing,
6 recording or releasing in [~~any~~] a public office [~~any~~] of an
7 instrument securing the loan may be charged to the borrower.

8 [~~(b) ATTORNEY FEES~~] B. Notwithstanding any
9 provision in [~~any~~] a note or other loan contract taken or
10 received [~~under this act~~] pursuant to the New Mexico Small Loan
11 Act of 1955, attorney fees shall not be charged or collected
12 except [~~where such~~] when the note or other contract has been
13 [~~turned~~] submitted in good faith to an attorney for collection
14 and after diligent effort to collect [~~has failed~~] on the part
15 of the licensee has failed.

16 [~~(c) COURTS COSTS Where suit is filed in any court~~
17 ~~of competent jurisdiction, court costs shall be collectable in~~
18 ~~accordance with the laws of New Mexico applicable thereto.~~

19 [~~(d) NOTARY FEES PROHIBITED~~] C. Notary fees
20 incident to the taking of [~~any~~] a lien to secure a small loan
21 or releasing such a lien shall not be charged or collected by
22 [~~any~~] a licensee, [~~nor by any~~] an officer, agent or employee of
23 a licensee [~~nor by~~] or anyone within [~~any~~] an office, room or
24 place of business in which a small loan office is conducted.

25 D. Delinquency fees shall be capped at five cents

1 (\$.05) for each one dollar (\$1.00) of each installment more
 2 than ten days in arrears; provided that the total of
 3 delinquency charges on any such installment shall be capped at
 4 ten dollars (\$10.00) and that only one delinquency charge shall
 5 be made on any one installment regardless of the period during
 6 which the installment remains unpaid."

7 Section 10. Section 58-15-23 NMSA 1978 (being Laws 1955,
 8 Chapter 128, Section 21) is amended to read:

9 "58-15-23. VIOLATION OF GENERAL USURY LAWS.--The [~~wilful~~]
 10 violation by [~~any~~] a licensee or by [~~any~~] an officer, manager,
 11 director, trustee, executive or employee directly engaged in
 12 operating a small loan office under the provisions of [~~this~~
 13 ~~Act~~] the New Mexico Small Loan Act of 1955 of any usury statute
 14 of this state within [~~any~~] an office, room or place of business
 15 in which the making of loans as a licensee is solicited or
 16 engaged or in association or conjunction therewith [~~shall be~~
 17 ~~ground~~] is grounds for suspension and revocation of license in
 18 accordance with the applicable procedures [~~applicable thereto~~
 19 ~~as~~] set forth [~~herein~~] in that act."

20 Section 11. A new section of the New Mexico Small Loan
 21 Act of 1955, Section 58-15-32 NMSA 1978, is enacted to read:

22 "58-15-32. [NEW MATERIAL] REQUIREMENTS FOR PAYDAY
 23 LOANS.--

24 A. A payday loan shall not exceed one thousand
 25 dollars (\$1,000).

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1 B. A payday loan agreement shall include a
2 provision granting the consumer the right to rescind the
3 transaction by returning in cash, or through certified funds,
4 one hundred percent of the amount advanced by a licensee for a
5 payday loan no later than 5:00 p.m. on the first day of
6 business conducted by the licensee following the execution of
7 the payday loan agreement. If a consumer exercises the right
8 of rescission pursuant to this subsection, no fee for the
9 rescinded transaction shall be charged to the consumer, and the
10 licensee shall not charge or impose on the consumer a fee for
11 exercising the right of rescission pursuant to this subsection.

12 C. A consumer shall be permitted to make payments
13 in any amount on a payday loan at any time before maturity
14 without a prepayment penalty or fee. A payment received by a
15 licensee shall first be applied to interest owed with any
16 remaining amount to be applied to principal.

17 D. After each payment is made, in full or in part,
18 on a payday loan, the licensee shall give to the person making
19 the payment a signed, dated receipt showing the amount paid,
20 amount credited toward interest and principal and the balance
21 due on the loan.

22 E. A check written by a consumer for a payday loan
23 shall be payable to the order of the licensee.

24 F. The licensee shall provide the consumer, or each
25 consumer if there is more than one, with copies of the payday

1 loan agreement in Spanish or English prior to the consummation
2 of the loan.

3 G. A payday loan agreement may not be renewed,
4 refinanced or extended without the mutual written consent of
5 the licensee and the consumer.

6 H. Licensees making payday loans shall provide the
7 consumer with an information brochure in English and Spanish as
8 determined by the director."

9 Section 12. A new section of the New Mexico Small Loan
10 Act of 1955, Section 58-15-33 NMSA 1978, is enacted to read:

11 "58-15-33. [NEW MATERIAL] PAYDAY LOANS--PERMITTED
12 CHARGES.--The following provisions apply only to payday loans:

13 A. a licensee may not charge or receive from a
14 consumer, directly or indirectly, interest, fees or charges
15 except as provided in this section;

16 B. the licensee shall only charge simple interest
17 on the amount of loan proceeds delivered to the consumer in a
18 payday loan. Unless a payday loan is repaid in full with cash,
19 certified funds or a check or debit having cleared the drawee
20 institution, the payday loan remains outstanding as a renewal,
21 refinance or extension for the purpose of capping the total
22 aggregate amount paid by the borrower. The aggregate amount of
23 principal and interest received by the licensee for a payday
24 loan includes all principal and interest received on the loan,
25 including principal and interest received after any renewals,

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1 refinance, extensions or default. The cap of the total
2 aggregate amount of principal and interest received by a
3 licensee shall not exceed two times the amount of the original
4 loan agreement principal balance. Once the licensee has
5 received the cap of the total aggregate amount of principal and
6 interest equal to two times the original loan agreement
7 principal balance, the payday loan shall be deemed satisfied
8 and considered paid in full by the consumer. The interest rate
9 charged on the outstanding balance after initial maturity shall
10 be capped at a rate not greater than the interest rate charged
11 during the initial loan term. Interest on loans shall be
12 computed based upon simple interest only; and

13 C. if there are insufficient funds to pay a check
14 or other type of debit on the date of presentment by the
15 licensee, a licensee may charge a borrower a fee not to exceed
16 and capped at fifteen dollars (\$15.00). Only one fee may be
17 collected by a licensee on a check or debit even if it has been
18 redeposited and returned more than once. Late fees or
19 delinquency charges other than interest as provided for in the
20 New Mexico Small Loan Act of 1955 shall not be allowed."

21 Section 13. A new section of the New Mexico Small Loan
22 Act of 1955, Section 58-15-34 NMSA 1978, is enacted to read:

23 "58-15-34. [NEW MATERIAL] PAYDAY LOANS--PROHIBITED
24 ACTS.--A licensee shall not:

25 A. use or threaten to use a criminal process in

1 this or another state to collect on a payday loan;

2 B. alter the date or other information on a check
3 drawn by a consumer in a payday loan transaction;

4 C. use a device or agreement that would have the
5 effect of charging or collecting more fees, charges or interest
6 than allowed and capped by law by entering into a different
7 type of transaction with the consumer that has that effect
8 except as specifically permitted by the New Mexico Small Loan
9 Act of 1955;

10 D. engage in unfair, deceptive or fraudulent
11 practices in the making or collecting of a payday loan;

12 E. charge a fee to cash a check representing the
13 proceeds of the payday loan;

14 F. use or attempt to use the check written by the
15 consumer for a payday loan as security for purposes of a state
16 or federal law;

17 G. have more than one payday loan outstanding with
18 a consumer at a time for all licenses operated under the same
19 trade name;

20 H. accept collateral for a payday loan other than
21 the consumer's check;

22 I. charge interest, fees or charges other than
23 those specifically authorized and capped, including:

24 (1) charges for insurance; or

25 (2) collection costs;

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[bracketed material] = delete

1 J. threaten to take any action against a consumer
2 that is prohibited by the New Mexico Small Loan Act of 1955;

3 K. include any of the following provisions in a
4 payday loan agreement:

5 (1) a hold harmless clause;

6 (2) a confession of judgment clause or power
7 of attorney;

8 (3) an assignment of or order for payment of
9 wages or other compensation for services;

10 (4) a provision in which the consumer agrees
11 not to assert a claim or defense arising out of the contract;
12 or

13 (5) a waiver of a provision of the New Mexico
14 Small Loan Act of 1955;

15 L. make a payday loan contingent on the purchase of
16 insurance or other goods or services;

17 M. advertise, display, distribute or broadcast or
18 cause or permit to be advertised, displayed, distributed or
19 broadcast, in any manner, a false, misleading or deceptive
20 statement or representation with regard to the charges, terms
21 or conditions for payday loans;

22 N. take a check, instrument or form in which blanks
23 are left to be filled in after execution of the check,
24 instrument or form;

25 O. offer, arrange, act as an agent for or assist a

1 third party in any way in the making of a payday loan unless
2 the third party complies with all applicable federal and state
3 laws and regulations;

4 P. enter into a payday loan with a consumer who
5 lacks the capacity to consent; or

6 Q. use provisions in documents associated with a
7 payday loan that are deceptive or misleading."

8 Section 14. A new section of the New Mexico Small Loan
9 Act of 1955, Section 58-15-35 NMSA 1978, is enacted to read:

10 "58-15-35. [NEW MATERIAL] SMALL LOAN COMPANIES MAKING
11 PAYDAY LOANS.--Effective January 1, 2006, a licensee that
12 issues payday loans shall file an annual report with the
13 division for data collection purposes on or before the last day
14 of March for the preceding calendar year on forms prescribed by
15 the director. The report shall disclose in detail and under
16 appropriate headings all information that the director requests
17 to determine if the licensee is complying with the provisions
18 of the New Mexico Small Loan Act of 1955."

19 Section 15. A new section of the New Mexico Small Loan
20 Act of 1955, Section 58-15-36 NMSA 1978, is enacted to read:

21 "58-15-36. [NEW MATERIAL] REQUIRED DISCLOSURES WHEN
22 MAKING PAYDAY LOANS.--A licensee making payday loans shall
23 provide a notice immediately above the borrower's signature on
24 each payday loan agreement in at least ten-point bold type
25 using the following language:

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